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South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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No. 13

## CONTENTS

House Week in Review.....	2
Bills Introduced.....	3

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### House Week in Review

Much of the House's time this past week was spent taking up a number of workers' compensation bills. With little or no controversy, the House gave approval to H. 3835, which, among other things, prohibits authorized health care providers from pursuing collection procedures against a workers' compensation claimant prior to final adjudication of his claim and revises requirements for reporting of workplace injuries; and H. 3836, which lists conditions under which stress arising out of employment is not compensable under workers' compensation laws. However, there was considerable debate concerning H. 3837, which would allow employers to terminate or suspend disability pay for employees immediately under certain conditions. Several varying amendments were offered to allow employees to receive a second opinion from a physician of his choice before termination or suspension of such payments, with one amendment requiring the employer to pay for the second opinion and the other requiring the employee to pay for it. However, both amendments were soundly defeated. Supporters of the amendments claimed that employees receiving these payments should be entitled to a second opinion before termination of the payments, while opponents claimed that efforts were needed to keep workers compensation costs under control and ensure smoother business operations. Following several hours of debate, the House gave second reading to the bill by an 83-16 margin. The House also began consideration of H. 3838, providing a procedure for rebutting presumption of disability because of loss of back, but had not voted on the measure by the end of last week.

Another issue receiving attention this week was higher education reform. A House Education and Public Works Committee bill (H. 3915) to revise the composition of the Commission on Higher Education came up for debate Thursday. This bill would expand the size of the commission, include on the commission members of governing boards of the state's colleges and universities, and create a joint legislative committee to study the governance and operation of higher education in South Carolina. A motion to table the bill failed by a vote of 18-78, and shortly thereafter the House agreed to adjourn debate on the bill until Tuesday, April 11.

## Legislative Update, April 11, 1995

### Bills Introduced

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The following bills were introduced in the House on March 21, 22 and 23. Not all bills introduced in the House are summarized in this Update. The bill summaries are arranged according to the committee to which the legislation was referred.

#### **AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS**

Increased Commission on Gross Sales of Leaf Tobacco (H. 3948, Rep. Harwell). This bill increases from 2.5 (two and a half) percent to 3.5 percent the maximum commission on gross sales of leaf tobacco in tobacco warehouses.

Authorization of Certain Fishing on Lee County's Lake Ashwood (H. 3955, Rep. G. Brown). This bill allows a person who has obtained a special "reservoirs, lakes and streams freshwater permit" to fish on Lake Ashwood in Lee County with nonmanufactured tackle or natural bait.

#### **EDUCATION AND PUBLIC WORKS**

Addition of Ex-Officio Members to Commissions of Public Works in Cities between 30,000-50,000 in Population (H. 3928, Rep. Hallman). This bill provides a procedure by which ex-officio members may be added to the Commissions of Public Works in cities (according to the most recent U.S. Census) of population over 30,000 but less than 50,000. Under these provisions, the mayor and chairman of the committee on water supply (if such committee exists) are ex-officio commissioners of public works if (1) requested by a resolution approved by at least 75 percent of the commissioners of public works, and (2) authorized by ordinance approved by at least 75 percent of the members of the municipal council. The board of commissioners of public works in the city must fill a commission vacancy by appointment for the unexpired term, with the appointment made by the remaining commissioners, except in the case of an ex-officio member of the commission.

Cooperative Education Service Centers Act of 1995 (H. 3945, Rep. Askins). This bill allows for the creation of cooperative educational service centers, enabling two or more school districts to cooperate in furnishing services. For purposes of these provisions, a "cooperative



## Legislative Update, April 11, 1995

educational service center" is a regional educational service unit designed to promote supporting, instructional, administrative, facility, community or other services contracted by participating member entities.

Two or more school districts or a school district and post-secondary institution seeking to establish a cooperative education service center (hereafter called "center") for the purpose of providing cooperative services may enter into a proposed agreement to form the center. The agreement must set forth the names of the participating districts and post-secondary institutions, which then may proceed to form the center by resolution of each governing board of the participating districts or institutions. The bill provides for setting the numbers of representatives on the cooperative board and allows for admission of additional school districts or post-secondary institutions as members of the center. The bill also provides for dissolution of a center, withdrawal of a district or institution from a center, and allows a district or institution not to participate in a specific activity proposed by the center. Services performed under direction of the center are to be financed from available monies of the participating entities that may legally be expended for such services in a proportionately agreed-upon manner.

The bill grants to the center the power to take and hold in its name real and personal property; operate schools and classes; determine which programs and facilities of the center are to be operated and maintained; select a depository for monies belonging to the center and invest funds in hand not needed at the time for conducting the center's affairs; and construct, purchase or lease sites, buildings and equipment to provide facilities needed for operation of a center at any appropriate location. Each center is a body corporate and public, allowed to hold title to property, sue and be sued, and be a party to contracts for any purpose authorized by law. The center also may use contributions from participating member entities to match state, federal and other funds when acceptance of such financial assistance requires matching of funds as condition for receiving such assistance.

**25 Percent Surcharge Imposed on Students Taking Excess Credit Hours at State-Supported Colleges and Universities** (H. 3947, Rep. Witherspoon). This bill imposes a 25 percent tuition surcharge on students who take more than (1) 140 credit hours to complete a baccalaureate degrees in a 4-year program at a state-supported college or university of South Carolina, or (2) 110 percent of the credit hours necessary to complete a baccalaureate degree in any program designated by the Commission on Higher Education as a 5-year program at a state-supported college or university of this state. Calculation of these credit hours taken at a college or university, or accepted for transfer, must exclude credit hours earned through (1) the College Board's Advanced Placement or CLEP examinations; (2) institutional advanced placement or course validation; or (3) summer term or extension programs. These tuition surcharges must be imposed beginning with the Fall, 1996 fall semester or quarter.



## Legislative Update, April 11, 1995

Installation of Driveways Along State Highways (H. 3963, Rep. Rice). Current law requires the Department of Transportation to construct at its expense and with its maintenance forces driveways within the right of way for the personal use of the property owner. This bill requires such driveways to be constructed at least cost, with private contractors also allowed to perform such work, and prohibits the driveway, whether one-way or two-way, from exceeding 250 feet in length. The bill also provides that the driveways may be constructed for the owner's business use, requires a business owner to reimburse the Department the full amount of work provided for business use, and allows the owner an income tax credit equal to 75 percent of the reimbursement pay. The business owner also may carry the unused credit forward to the 5 succeeding taxable years.

Installation of Residential Rights of Way Entrances and Aprons to State Highways (H. 3967, Rep. Fulmer). This bill deletes a provision requiring the Department of Transportation to install, at its expense, right-of-way entrances (driveways) for a property owner's personal use.

No Drivers' Licenses for Persons Under 18 Who Are Not High School Graduates or Enrolled in School (S. 7, Sen. Leatherman). This bill prohibits issuance of a driver's license (includes regular driver's license, special restricted driver's license, and a beginner's permit) to a person age 18 or under unless the person:

(1) is a high school graduate or has a GED (General Education Development Certificate); or

(2) is currently enrolled in a public or private school which has been approved by the State Board of Education or a member school of the South Carolina Independent Schools Association or similar organization, or a parochial, denominational or church-related school or other programs which are accepted by the State Board of Education; and has conformed to the attendance laws, regulations and policies of his school, school district and the State Board of Education (as applicable); and is not currently suspended from school.

The bill also requires suspension of the driver's license of a person age 18 or under upon notice from the local school board that the licensed youth has withdrawn from school and not provided notice of enrollment in another school district. However, the license may be issued for the youth denied a license or whose license was suspended pursuant to these provisions if the school district board of trustees determines that a personal or family hardship exists which requires a person to obtain a license for employment or medically-related purposes.

## JUDICIARY

Confiscation of Vehicle Registrations and License Plates of Persons Convicted of Certain Crimes (H. 3914, Rep. Simrill). This bill requires the confiscation of the license plate and vehicle registration of each vehicle registered in the name of a person convicted of any of the following:

## Legislative Update, April 11, 1995

- (1) causing great bodily injury or death by operating a motor vehicle while DUI;
- (2) a second or subsequent DUI violation;
- (3) a second or subsequent violation for driving with a canceled, suspended or revoked license;
- (4) failure to stop and render aid in a motor vehicle accident that results in death or personal injury;
- (5) failure to stop a motor vehicle when signalled by a law enforcement vehicle; or
- (6) knowingly operating an uninsured motor vehicle.

If a person's license plate and vehicle registration are confiscated because of violations of (1), (2) or (3) above, he may not apply for a new license plate for a vehicle registered in his name during the period for which his privilege to drive has been suspended. A person whose license plate and vehicle registration are confiscated because of violations of (4), (5) or (6) above cannot apply for a new plate for 1 year following conviction. The person convicted of any of these crimes must surrender the plate of each vehicle registered in his name at the time of conviction or guilty plea, and if he does not surrender the plate, a warrant must be issued to seize the plate, with a \$25 fee imposed on a person who fails to surrender a plate once the warrant is issued.

The bill also allows the convicted person's vehicle to be registered for use of other licensed drivers in the household, with a special plate issued for that purpose.

The bill deletes provisions which currently state that (1) suspension of a driver's license does not automatically suspend the person's license plates, and (2) the vehicle registration of a convicted person is not suspended if the person maintains proof of financial responsibility for his registered vehicles.

**Popular Election of Judges (H. 3916, Rep. R. Smith).** Currently in South Carolina, justices and judges of the State's courts of uniform jurisdiction (i.e., Supreme Court, Court of Appeals, Circuit Court, Family Court) are elected by the General Assembly, while magistrates are appointed by the governor with the advice and consent of the Senate. If this proposed constitutional amendment is adopted, however, justices and judges of the State's courts of uniform jurisdiction would be elected by the State's voters, in the manner as provided by law of the General Assembly. Also under this proposal, magistrates would be elected by the voters of the particular county in which they serve, and municipal judges would be elected by the voters of the particular municipality in which they serve. Justices and judges serving in office on the date these provisions become effective would continue to serve their then-current term. The General Assembly may also provide for staggered terms for these justices and judges.

**Indecent Exposure (H. 3924, Rep. Fair).** This bill deletes current provisions pertaining to the offense of indecent exposure and instead establishes the offenses of "misdemeanor public indecency" and misdemeanor "indecent exposure."



## Legislative Update, April 11, 1995

Under these provisions, a person is guilty of misdemeanor public indecency if, in a public place, he knowingly or intentionally engages in sexual intercourse; engages in deviate sexual conduct; appears in a state of nudity; or fondles the genitals of himself or another person. Upon conviction, punishment for this offense is imprisonment of not more than 1 year and a fine not exceeding \$5,000.

A person is guilty of misdemeanor indecent exposure if, while in a nonpublic place, he knowingly or intentionally is seen by persons other than invitees and occupants of that place engaged in sexual intercourse; engaged in deviate sexual conduct; or fondling the genitals of himself or another person. Upon conviction, punishment for this offense is imprisonment not exceeding 60 days and a fine not exceeding \$500.

Magistrates Have Concurrent Jurisdiction with Other Courts to Grant Injunctive Relief in Certain Matters (H. 3927, Rep. A. Young). This bill give magistrates concurrent jurisdiction with other courts of competent jurisdiction to grant injunctive relief or other such relief as considered appropriate in matters involving real estate restrictive covenants, upon petition of any party.

Legislators May Not "Trade Votes" in Judicial Elections (H. 3942, Rep. Seithel). This bill prohibits a member of the General Assembly from pledging to another legislator to vote for a particular candidate for judicial office in return for the other member's pledge to vote for another candidate for judicial office.

Revision of Definitions under Tort Claims Act (H. 3943, Rep. Keyserling). Under current provisions of the State's Tort Claims Act, an "employee" does not include an independent contractor doing business with the State or any of its political subdivisions. This bill revises the definition of "employee" for purposes of the Act, to provide that an employee does not include the independent contractor as listed above except a nonprofit corporation chartered or authorized to do business in South Carolina by the Secretary of State, providing rehabilitative services to minors by contract with a state agency, political subdivision or governmental entity. The bill also adds expands the definition of "agency", "political subdivision" and "governmental entity" as pertains to this Act to include nonprofit organizations which are chartered or authorized to do business in South Carolina by the Secretary of State and which provide rehabilitative services to minors by contract with a state agency, political subdivision or governmental entity.

Destruction of and Damage to Signs (H. 3946, Rep. Askins). This bill prohibits anyone from destroying or damaging a sign erected by the State, its agencies or departments, or political subdivisions or a local governing body. This offense would be a misdemeanor, punishable upon conviction by a fine of between \$500 and \$1,000, or imprisonment not exceeding 30 days, or both fine and imprisonment. Additionally, the person convicted of this

## Legislative Update, April 11, 1995

offense must reimburse the entity for the cost of repairing or replacing the sign.

### Governor To Appoint Justices and Judges from List of Nominees Submitted by a Judicial Merit Selection Commission (H. 3961 and H. 3962, Rep. Wilkins).

Currently in South Carolina, justices and judges of courts of uniform jurisdiction (Supreme Court, Court of Appeals, Circuit Court and Family Court) are elected by joint public vote of the General Assembly (i.e., the House and Senate voting together). Judges of the Administrative Law Judge Division also are elected by joint public vote of the General Assembly. Several representatives last week introduced measures to alter the procedure by which these justices and judges are selected, such that they would be appointed by the governor from a list of nominees submitted by a newly-created judicial merit selection commission. Summarized below are 2 measures addressing this change---H. 3962, a proposed constitutional amendment to require these justices and judges to be selected by the governor from a list of nominees submitted by this new commission, and H. 3961, a bill serving as the "implementing legislation" for creation of the new commission, listing the membership of the panel and its duties and responsibilities. Because implementation of H. 3961 is contingent on approval of H. 3962, the summary of H. 3962 is listed first, followed by the summary of H. 3961.

H. 3962 is the proposed constitutional amendment requiring the governor to appoint there justices and judges from a list of nominees submitted by a newly-created Judicial Merit Selection Commission. This commission must nominate between 3 and 5 persons who it deems best qualified among all applicants for vacancies on these courts. If fewer than 3 persons apply or agree to be considered for a vacancy, or if the commission concludes there are fewer than 3 candidates qualified for a vacancy, then the commission must submit to the governor only the names of those applicants determined to be qualified, with a written explanation for submitting less than 3 names. If the commission submits at least 3 names to the governor, then he must select 1 of these nominees, but if fewer than 3 names are submitted, then the governor may reject those nominees and require the commission to submit additional nominations.

This proposed constitutional amendment also would require these justices and judges, at least 6 months prior to expiration of their term in office, to petition the commission to be retained in office or to inform it of the intention to retire. The commission must review the incumbent's qualifications, and if the commission determines the incumbent should be retained, then only his name is forwarded to the governor, with a recommendation of reappointment. However, if the commission does not recommend reappointment, or the governor does not make the reappointment within 30 days of presentation, then the commission must submit between 3 and 5 nominees to the governor, as in the same manner listed above in the first paragraph.



## Legislative Update, April 11, 1995

This proposal also calls for creation of a South Carolina Judicial Merit Selection Commission to consider the qualifications and fitness of judicial candidates and to assist the governor in selecting qualified justices and judges on the state's courts of uniform jurisdiction. The General Assembly, by law, must provide for establishment of the commission, along with its membership, duties, functions and procedures.

Justices and judges serving in office at the time these provisions become effective would continue to serve the term for which they had been appointed.

If adopted by the General Assembly (requires approval of two-thirds of the entire membership of each chamber---83 votes in the House, 31 votes in the Senate), this proposed constitutional amendment would be submitted to the voters for approval at the November 1996 general election.

H. 3961 is a bill to implement by statute the newly-created judicial merit selection commission, as authorized in the proposed constitutional amendment of H. 3962. Created under H. 3961 is a Judicial Merit Selection Commission (hereafter called "commission"), which must assist the governor in selecting qualified justices and judges for vacancies (e.g., resulting from expiration of term, death, etc.) in the Administrative Law Judge Division, Family Court, Circuit Court, Court of Appeals and Supreme Court. This commission consists of 12 members---4 appointed by the Speaker, 4 appointed by the Senate President Pro Tempore, and 4 appointed by the governor. None of the commission members may be a current member of the General Assembly. 8 commission members (3 each appointed by the Speaker and Senate President Pro Tempore, and 2 appointed by the governor) must be practicing members of the South Carolina Bar, admitted to practice for at least 5 years, with the remaining 4 commission members being non-lawyers. Prior to making their respective appointments, the Speaker, Senate President Pro Tempore and Governor must solicit recommendations for their appointments to the commission from the President of the State Bar and the Dean of the University of South Carolina School of Law. Commission members are ineligible for nomination and appointment as a judge or justice of the Administrative Law Judge Division (ALJD) or the other 4 courts listed above (Family Court, Circuit Court, Court of Appeals and Supreme Court) while serving on the commission and for 2 years after ceasing to be a member of it. Commission members also may not hold office in a political party and also may not hold appointed or elective office of the United States, the State or other governmental entity. No member may serve more than 2 full 4-year terms.

The bill provides for the commission's organization, with its organizational meetings open to the public and public participation allowed at those meetings. The commission's staff and operating expenses are to be provided by the General Assembly.

The commission is responsible for determining when vacancies are to occur in the ALJD or other 4 courts and investigating the qualifications of

### Legislative Update, April 11, 1995

persons seeking nomination as a justice or judge. Anyone seeking nomination may apply to the commission, and any person or organization may also submit names of persons whom he (or it) desires to be considered for nomination. No person then serving in the General Assembly at the time of the judicial vacancy may apply or agree to be considered for nomination. The bill lists factors (such as constitutional qualifications, experience and judicial temperament) the commission must consider in examining the qualifications of candidates and allows the commission to investigate and obtain information relative to any candidate from any state agency or other group. The commission also may issue subpoenas requiring appearance of persons or production of information and may also administer oaths and take dispositions in carrying out its duties. No person may be excused from attending and testifying or producing books or other records before the commission on grounds that the testimony or records could incriminate him or subject him to forfeiture, but that person may not be prosecuted or subjected to any criminal penalty or forfeiture after claiming his privilege against self incrimination for the testimony or evidence.

Once the commission completes the investigation, a public hearing must be scheduled concerning the qualifications of the judicial candidates. Persons may testify at this hearing, provided the testimony is under oath. During the investigation, the commission also may schedule an executive session at which each candidate and other persons the commission wishes to interview may be interviewed by the commission on matters related to the candidate's qualifications. The bill also allows a public hearing to be waived if there is no known opposition to candidates for a particular judgeship, there appears to be no substantial reason for having a public hearing (whether or not a candidate is an incumbent), and no request for a hearing is made by at least 4 commission members. Information the commission obtains and uses in making its findings of fact (except information presented at the hearing) is confidential and must be destroyed after the commission reports its findings of fact, or after a candidate withdraws his name from consideration.

Except in the case of incumbent judges (to be discussed shortly), the commission must select and send to the governor names of at least 3 but not more than 5 nominees whom it considers best qualified for the judicial office under consideration. If fewer than 3 persons apply or agree to be considered for the vacancy, or the commission concludes fewer than 3 candidates are qualified, then the commission must report to the governor only those whom applied or agreed to be considered and are determined to be qualified, with an explanation for submitting fewer than 3 names. If the commission submits at least 3 names to the governor, then he must select one of the nominees, but if fewer than 3 names are submitted, then the governor may reject those nominated and request further nominations from the commission. The bill prohibits any candidate for ALJD or the other 4 courts (including sitting judges) from campaigning or lobbying (whether directly or indirectly) the governor for appointment to the office sought until the commission has submitted its nominations.



## Legislative Update, April 11, 1995

Sitting justices and judges, at least 6 months before expiration of their term in office, must inform the commission as to whether they will retire or seek another term, with the commission reviewing the person's qualifications if he seeks to remain at his judicial post. The commission must recommend the sitting judge for reappointment unless 7 of the commission's 12 members vote to deny recommendation of another term for the incumbent judge. If reappointment is recommended, the commission must submit only the incumbent's name to the governor, with a recommendation of reappointment. If the commission denies reappointment, or the governor does not reappoint the incumbent within 30 days of presentation, then the commission must submit a list of additional nominees.

The bill also requires the commission to adopt procedures for reviewing qualifications of retired justices or judges who are assigned to serve in particular courts (for example, if a retired Supreme Court justice is assigned to the Circuit Court).

Additionally, the bill changes current statutes to provide that judges of the ALJD and the 4 courts listed in this bill (Supreme Court, Court of Appeals, Circuit Court and Family Court) are to be appointed by the governor from a list of nominees submitted by the commission. These provisions also require interim vacancies in the Circuit Court and Family Court (because of an unexpired term) of more than 1 year to be filled in the manner as provided in this bill (appointment by governor from list of nominees selected by the commission). An unexpired term of a Family Court judge of 1 year or less may be filled by the governor upon recommendation of the Chief Justice. With the General Assembly no longer electing justices and judges, this bill also deletes the General Assembly's Judicial Screening Committee.

### Senate Reapportionment Plan (S. 9, Sen. Holland).

In 1993, a three-judge federal panel ordered the General Assembly to pass new reapportionment plans for the House and Senate and the state's congressional seats. In 1992, with the General Assembly and Governor unable to agree on legislative redistricting plans, and the General Assembly unable to agree in a timely manner on congressional redistricting, the three-judge panel had imposed a reapportionment plan for all 3 entities. However, the court-ordered plans were challenged by persons claiming the plans did not include enough majority-black seats; the challenge was heard by the U.S. Supreme Court, which in turn remanded the case back to the 3-judge panel, which in turn subsequently ordered the General Assembly to come up with new plans. Legislators passed new redistricting plans for the state's congressional seats and State House seats last spring, making only minor changes in the state's congressional districts (switching a few precincts between the 1st and 6th and between the 2nd and 3rd districts) while adding approximately 10 new majority-black seats in the State House of Representatives. The Senate was not up for election in 1994 (elected only in presidential election years, such as 1992, 1996, etc.), so no new Senate redistricting plan was needed last year; however, the Senate was requested

## Legislative Update, April 11, 1995

to pass a new plan by this summer (August 1995) or face further court intervention.

The 1992 court-ordered reapportionment plan for the Senate created 11 majority black districts, of which 10 also had a majority black voting age population. (One district in Greenville County, Senate District 7, had an overall population 51.9% black, but only 47.7% of the district's voting age population was black.) The Senate-passed reapportionment plan, as approved last week in that chamber, created a new majority-black Senate district in the Charleston area, including portions of Berkeley, Charleston, Colleton, Dorchester and Hampton Counties.

Life Without Parole Upon Certain Number of Convictions (S. 41, Sen. Courson). This bill requires a sentence of life without parole for persons convicted a certain number of times of a "most serious offense" or a "serious offense."

Under these provisions, except when the death penalty is imposed, a person convicted for a "most serious offense" must be sentenced to life imprisonment without parole if he has at least 1 prior conviction for (1) a most serious offense; (2) a federal or out-of-state conviction for an offense which would be classified as a most serious offense under this bill; or (3) any combination of the offenses in (1) and (2). Also, except in death penalty cases; a person convicted of a "serious offense" must be sentenced to life without parole if he has at least 2 prior convictions for (1) a serious offense; (2) a most serious offense; (3) a federal or out-of-state offense that would be classified as a serious or most serious offense; or (4) any combination of offenses listed in (1-3).

The bill lists offenses which are classified as a "most serious offense", examples of which are murder, criminal sexual conduct, armed robbery, kidnapping and first degree burglary. A "serious offense" includes felonies which carry a maximum imprisonment of 30 years (except for felonies included above as a "most serious offense"---murder, armed robbery, etc.) and a number of other felonies as listed in the bill (some of which are so-called "white collar" crimes---tax evasion, bribery, insurance fraud, etc.--and some of which are violent crimes---drug trafficking, causing death while operating a vehicle while DUI, etc.) A "serious offense" also includes being an accessory before the fact for any of the offenses classified as "serious" or attempting to commit a "serious" offense.

Persons sentenced pursuant to these provisions are ineligible for parole except in limited circumstances (to be discussed shortly) and are ineligible for early release or release to relieve prison overcrowding. However, a person sentenced pursuant to this bill may be paroled if (1) the Department of Corrections requests the Department of Probation, Parole and Pardon Services (DPPS) to consider the person for parole, (2) DPPS determines that because of health or age the person is no longer a threat to society, and (3) the person meets 1 of the following 4 requirements:



Legislative Update, April 11, 1995

(a) has served at least 30 years of the sentence imposed pursuant to this bill and is at least age 65;

(b) has served at least 20 years of the sentence imposed pursuant to this bill and is at least age 70;

(c) is afflicted with a terminal illness where life expectancy is 1 year or less; or

(d) can produce evidence comprising the most extraordinary circumstances.

For purposes of determining a conviction under these provisions, if the person was convicted for multiple offenses which were committed during a single chain of circumstances, a single course of conduct, connected transactions, or times so closely connected in point of time that they may be considered as one offense, then such multiple convictions must be treated as 1 conviction.

Revision of Redevelopment Authority Board (S. 662, Sen. Passailaigue).

Last year, the General Assembly passed an act authorizing creation of redevelopment authorities, to oversee the orderly disposal of closed or realigned military bases or other excess federal property and the subsequent development of such property. This bill revises the composition of a redevelopment authority board, to provide that if the federal property subject to disposal is contained wholly or partially within a county, at least a portion of which is in an MSA (Metropolitan Statistical Area) that extends over more than 1 county in this state, then the board must consist of 7 members, appointed by the governor with the advice and consent of the Senate. Of these 7 members, 3 must be residents of each of the 3 counties that lie wholly or partially in the MSA; 3 must be residents of the municipality within whose boundaries the major portion of properties scheduled for disposal lies; and 1 at-large member, who must be a resident of 1 of the counties which lies (in whole or in part) in the MSA, and who must serve as chairman.

The bill deletes a provision which prohibits a member of an authority from having held elective office within 1 year of the date on which he begins service on the authority and prohibits authority members from simultaneously holding another office of honor or profit of any political subdivision (current law only prohibits holding another office of honor or profit of this State). Also deleted are provisions which forbid authority members, within 1 year prior to beginning service on the authority, from serving as an officer or member of the executive committee of a commission, etc. (established by gubernatorial executive order prior to passage of last year's Redevelopment Authority Act) concerned with effects of closure of a federal military installation. The bill also provides that if the Senate does not advise and consent to an interim appointment prior to Sine Die adjournment that session, then the position is deemed filled by the appointee(s) submitted by the governor.

Legislative Update, April 11, 1995

**LABOR, COMMERCE AND INDUSTRY**

Swimming Pool Operations (H. 3913, Rep. Easterday). For purposes of regulating construction and operation of public swimming pools, this bill defines "homeowners' association" as an association of owners incorporated as a nonprofit organization under South Carolina law for purpose of managing residential real estate in a subdivision, development or condominium, including operation of a swimming pool serving residents of the subdivision, development or condominium. Additionally, the bill exempts public swimming pools owned and operated by a homeowners association from being required to obtain operating permits and meet water quality standards if (1) the pools are used only by the permanent residents and their invited guests, and (2) the Department of Health and Environmental Control (DHEC) approves a request for exemption submitted by the homeowners association. However, an exemption cannot be granted to an association with a pool if all or a portion of the residential units are time-shared, rented or leased, unless occupants of those units are excluded from using the pool except as a guest of and accompanied by a permanent homeowners' association resident.

State Energy Codes (H. 3926, Rep. Keyserling). This bill updates references to state energy codes for purposes of building energy efficiency standards, such that the current edition of the Council of American Building Officials (CABO) Model Energy Code is adopted as the State's building energy efficiency standard (hereafter called "standard") for 1 and 2-family dwellings. For other buildings, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1 is adopted as the State's building energy efficiency standard. The bill also specifies that a 1 or 2-family dwelling is in compliance with the standard if built in compliance with prescriptive standards issued by the South Carolina Residential Builders Commission, in consultation with the State Energy Office, based on computer models of the Model Energy Code. Furthermore, 1 and 2-family dwellings with no greater than 20 percent of wall area composed of glass are deemed in compliance with the standard upon certain portions of the dwelling meeting various thermal resistance ratings.

Workers' Compensation Reform (H. 3931, House Labor, Commerce and Industry Committee). This bill contains a number of reforms to the State's Workers' Compensation System, with this bill containing a number of provisions from bills introduced earlier this session, as follows:

---Provides that in cases where an injured employee has 50 percent of more loss of use of back, he is presumed, rather than deemed, to have suffered total and permanent disability, with this presumption of disability because of 50 percent or more loss of back rebuttable by a preponderance of the evidence.

---Provides that mental illness resulting from work-related stress is not considered an accidental injury arising out of employment (for workers' compensation purposes) unless [1] the stressful employment conditions



## Legislative Update, April 11, 1995

causing the mental illness were extraordinary and unusual in comparison to pressures and tensions experienced by individuals performing similar work; [2] the stressful employment conditions were the predominant cause of the mental injury; and [3] the mental injury was caused by stressful employment conditions that exist in a real and objective sense. Also states that mental injury is not compensable if resulting from verbal disagreement with an employer or coemployee or resulting from an employer's personnel decision (such as disciplinary action or involuntary termination).

---Allows an employer, once an employee has been out of work for 8 days because of work-related injury or occupational disease, to start temporary disability payments immediately. These payments may continue for up to 120 days without waiver of any grounds for denial of a claim as may appear in a good faith investigation. Payment of temporary disability compensation may be terminated immediately if the employee has returned to work or agrees he can return to work. Furthermore, if the employee has been released by the treating physician to work or limited duty work, and the employer (as appropriate) provides work or limited duty work, compensation may be terminated or suspended if the employee refuses to accept the particular work. An employee refusing medical treatment or an examination or evaluation is not entitled to compensation benefits during the period of refusal. However, an employee may request a hearing to have temporary compensation reinstituted after termination, with the commission required to give this hearing priority consideration over other hearing requests.

---Provides that "average weekly wage," for purposes of workers compensation payments, must be calculated by taking total wages paid for last 4 quarters immediately preceding the quarter when the injury occurred (as reported on the Employment Security Commission's employer contribution reports) divided by the lesser of 52 or the actual number of weeks for which wages were paid.

---Prohibits an unauthorized health care provider from actively pursuing collection procedures against a workers' compensation claimant prior to final adjudication of the claimant's claim. Violation of this prohibition (after notice to the provider from the claimant or his representative that adjudication is ongoing) results in a \$500 penalty payable to the workers' compensation claimant. Makes it a misdemeanor, punishable upon conviction for each offense by a fine not exceeding \$500 and/or imprisonment not exceeding 1 year, for a person to (1) receive a fee or gratuity on account of services rendered, unless the fee/gratuity is approved by the commission or such court, or (2) make it a business to solicit employment for a lawyer or for himself with regard to a claim or award for compensation.

---Revises requirements for reporting of workplace injuries to the commission. If an injury requires minimal medical attention at a cost not to exceed an amount specified by regulation of the commission and does not cause more than 1 lost workday or permanency, then the employer is not required to file a report with the commission or their insurance carrier.

## Legislative Update, April 11, 1995

However, an injury for which there is no compensable lost time of permanency, and the medical treatment does not exceed that specified by Commission regulation, must be reported annually, while injuries involving compensable lost time, medical attention in excess of the limit prescribed by Commission regulation, or the possibility of permanency, must be reported within 10 business days after the occurrence and knowledge of it. For injuries of a South Carolina National Guard member, reporting periods must be counted from the date the employer (the Guard) has knowledge that the federal government has denied benefits to the injured guard member or that benefits or additional benefits may be due under the State's Workers' Compensation laws.

**South Carolina High Voltage Power Line Safety Act (H. 3959, Rep. A. Young)**. This bill lists procedures which must be followed in order to ensure the safety of persons working in the vicinity of high voltage power lines. For purposes of these provisions, "high voltage" is voltage in excess of 600 volts, while "authorized persons" include, among others, employees of electric utilities, employees of governments which have authorized circuit construction on or near the poles or structures of an electric utility, and persons and business entities doing work as independent contractors for the utility, government, etc.

The bill prohibits (unless certain precautions have been taken) work by or on behalf of an unauthorized person or business entity from being conducted upon land, a building or other premises if during the performance of the work, the person performing the activity, or a tool used by him in such activity, may come within a distance of a high voltage overhead line (hereafter called "line") prohibited by regulations of the Federal Occupational Safety and Health Administration (OSHA). Furthermore (again, unless precautions are taken), an unauthorized person or business entity may not operate mechanical or hoisting equipment capable of vertical, lateral or swinging motion within distance of these lines as prohibited by OSHA regulation.

An unauthorized person or business entity seeking to temporarily perform work or an activity within closer proximity to a line than permitted by these provisions must provide notice to the electric utility operating the line, seeking an arrangement whereby this work can be performed. The person or entity may perform the work only after satisfactory mutual arrangements have been made between the utility and person or business entity responsible for the work. Arrangements, as examples, may include placement of temporary barriers to prevent contact between the lines and the persons/equipment or temporary relocation or raising of the lines, with the utility determining which arrangements are most feasible given the circumstances. However, the utility may determine that no arrangements may be made to allow the activity to be safely carried out and may refuse on that basis to enter into an agreement. If an arrangement is reached, then the person or business entity responsible for performing the work in vicinity of the lines must pay the utility's actual expenses in providing the arrangements, except when the utility has installed lines within a



## Legislative Update, April 11, 1995

distance set by OSHA regulations of an existing fixture or structure that has been in place at a permanent location. The utility may require payment to be made before providing the arrangements and must commence construction for providing arrangements within 5 working days of receipt of payment. Once initiated, the clearance work continues during normal business hours, without unreasonable interruption to completion, unless natural causes require emergency work to reestablish service to customers.

The bill also prohibits an unauthorized person, firm, corporation, etc. from operating a crane, derrick or similar machine capable of vertical or other motion that can reach the lines, unless the owner, agent or employee responsible for operating the equipment maintains a warning sign, legible at 12 feet, within and on the outside of the equipment. A person must be designated to observe clearance of the equipment and give timely warning for all operations when it is difficult for the operator to maintain the desired clearance by visual means.

An unauthorized person or business entity, or their agent, violating these provisions may be subject to a civil penalty not exceeding \$1,000. Additionally, the person or entity responsible for the work who violates these provisions and whose subsequent activities within the vicinity of the lines result in damage to utility facilities or damage to a person or property is strictly liable for damage. The person or entity must indemnify the utility against any claims for personal injury incurred in defending claims resulting from work in violation of these provisions.

The provisions of this act do not apply, among others, to governmental entities responding to an emergency situation or to collection of trash or refuse using equipment designed for that purpose.

## MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

Department of Corrections May Establish Program Involving Use of Inmate Labor by Nonprofit Organization (H. 3923, Rep. Anderson). This bill allows the director of the Department of Corrections (hereafter called "department") to establish a program which involves use of inmate labor by a nonprofit organization for manufacturing and processing goods, wares or merchandise, or providing services. The director may enter into contracts necessary to implement the program, with the contracts allowed to include rental or lease agreements for state buildings or portions thereof on the grounds of an institution or facility of the Department and to provide for reasonable access to and from the building to establish an operate a facility.

Inmates may participate in this program only on a voluntary basis and only after being informed of the conditions of his employment. No inmate participating in this program may earn less than the prevailing wage for work of similar nature in the private sector, nor may inmate participation

### Legislative Update, April 11, 1995

in the program result in displacement of employed workers in South Carolina or impair existing contracts for services.

The bill also contains other provisions concerning the participation of inmates in this program; in participating in the program, inmates are not considered State employees. No inmate participating in a project designated by the Director of the Bureau of Justice Assistance (pursuant to Public Law 90-351) is eligible for unemployment compensation upon termination from the program. Earnings of the inmate must be paid directly to the Department and applied as currently provided under state law for prisoners performing other paid work (i.e., other than that specified by this program). Finally, if an inmate participates in this program and has observed all the program's rules, then he is entitled to a deduction from the term of his sentence, beginning with the day when participation begins. This deduction is computed at the rate of 20 days for each month in the program.

Revision of Composition of Advisory Committee on Alzheimer's (H. 3929, Rep. P. Harris). This bill changes the name of the "Statewide Alzheimer's Disease and Related Disorders Registry" to the "Alzheimer's Disease Registry", specifying that the purpose of this registry is to provide a central information data base on individuals with this disease or related disorders to assist in development of public policy and planning. The bill revises the functions of the registry to include the provision of information for policy planning and nonidentifying data to support research on this disease. Additionally, in gathering data, the registry must to the extent possible rely on data from existing sources but may also contact families and physicians of persons reported to the registry for the purpose of gathering data and providing information on available public and private resources.

The bill also expands the size of the registry's advisory committee to 23 members, adding to the membership, among other organizations, representatives of AARP, Clemson University, South Carolina State University, and the South Carolina Medical Association. This advisory committee is required to assist the registry in defining the population to be included in the registry; developing procedures and forms for collecting, recording, etc. data; developing protocols and procedures to be disseminated and used by health care providers in identifying subjects for the registry; and developing procedures for approving research projects or participation in such projects.

Except for use in collecting data on deaths from the Bureau of Vital Statistics of DHEC, identifying information collected or maintained by the registry may not be released unless consent is obtained from the subject or his legal representative. The bill provides that the registry, USC's School of Public Health, or persons, medical facilities or other organizations providing or releasing information in accordance with these provisions may not be held liable in a civil or criminal action for divulging confidential information, unless the person or organization acted in bad faith or with malicious purpose. Finally, the bill requires the registry to submit an



## Legislative Update, April 11, 1995

annual report to the Governor's Office, Division on Aging, Alzheimer's Disease and Related Disorders Resource Coordination Center; DHEC; and the Division of Research and Statistics (Health Statistics) of the Budget and Control Board.

**Practice of Psychology (H. 3944, Rep. J. Brown).** Current law provides that for purposes of State law governing licensing and regulation of psychologists, a person practices in this occupation if he [1] holds himself out to be a psychologist, or [2] renders for a fee a service involving the recognized principles, methods and procedures of psychology. This bill would provide that a person also practices in this occupation when he "practices as a psychologist."

**Examinations for Registration as Physical Therapists or Physical Therapist Assistants (H. 3949, Rep. J. Brown).** Current law requires the State Board of Physical Therapy Examiners to give examinations for persons seeking to register as physical therapists or physical therapist assistants, with the examination passing grade determined by Board regulation. This bill deletes the provision pertaining to establishment of the passing grade by board examination, instead providing that for exams administered by the Professional Examination Service, Assessment Systems Inc. or other entity approved or engaged by the board, before July 1, 1995, the passing score for the physical therapist exam and physical therapist assistant exam must be 1.5 standard deviations (70 converted pass point) below the mean for the raw score of the exam. After that date, the criterion referenced passing point must be equal to a scaled score of 600, based on the score range of 200-800 as adopted on February 2, 1993 by the Federation of State Boards of Physical Therapy.

**Respiratory Care Practitioners Act (H. 3950, Rep. J. Brown).** This bill revises the definition of "respiratory care practitioner," as pertains to the State's Respiratory Care Practitioners Act, so as to specify that a practitioner must be a graduate of a school for respiratory therapy approved by the American Medical Association (AMA) or a successor accrediting authority recognized as such by the board (as currently opposed to only a school for such therapy approved by AMA).

The bill also makes revisions concerning persons exempt from the Respiratory Care Practitioners Act, as follows:

---Provides that the current exemption for persons studying for a degree or certificate in respiratory therapy in a program accredited by the AMA also applies to a program accredited by a successor accrediting authority as recognized by the Board of Medical Examiners. Deletes a provision stating that the program must be accredited in collaboration with the Joint Review Committee for Respiratory Therapy Education.

---Provides that the current exemption for persons who pass an exam certified by the National Council of Health certifying agencies continues

## Legislative Update, April 11, 1995

also if the exam is certified by other successor organizations as recognized by the board.

---Provides that current exemption for a respiratory student who practices to his level of clinical competency continues also if certified by a successor accrediting authority to the AMA as recognized by the board.

The bill also specifies that a person applying to the board for issuance of a limited certificate to practice respiratory care must present documentation he is a graduate or student from a respiratory care program approved by the AMA or a successor accrediting authority as recognized by the board. Deletes a provision requiring he be a graduate or student of a Joint Review Committee for Respiratory Therapy Education approved program.

Licensing of Foreign-Trained Occupational Therapists and Therapy Assistants (H. 3951, Rep. J. Brown). This bill deletes provisions authorizing the issuance of temporary or regular certificates of licensure to foreign-trained occupational therapists and occupational therapy assistants.

Persons Not Licensed as Dentists Prohibited from Certain Acts Related to Dental Treatments (H. 3958, Rep. Hallman). This bill prohibits persons who are not licensed as dentists from performing certain activities pertaining to dental treatments and operation of a dental office. Under these provisions, no person other than a licensed dentist may [1] employ a dentist or dental auxiliary in operating a dental office, or [2] control use of dental equipment or material which is being used to provide dental services (whether the services are provided by a dentist or dental hygienist, assistant or auxiliary). Furthermore, persons not licensed as dentists may not exercise control over [1] the selection of a course of treatment for a patient, procedures or materials to be used as part of the course of treatment, or the manner in which the course of treatment is carried out by the licensee; [2] a dentist's patient records; [3] policies and decisions relating to pricing, credit, refunds, warranties and advertising; and [4] decisions relating to office personnel and hours of practice.

Arrangements (such as lease or rental agreements) for the provision of dental equipment or materials entered into by a licensed dentist with a person not so licensed must contain a provision in which the dentist expressly maintains complete care, custody and control of the equipment or material.

Anyone violating these provisions is subject to the civil penalties for unlawful practice of dentistry, with each day's violation a separate offense.

More Members on State Board of Dentistry (H. 3964, Rep. Elliott). This bill expands the number of members on the State Board of Dentistry from 9 to 10 members, with the additional member being a dental hygienist. The bill



## Legislative Update, April 11, 1995

also provides that dental hygienists on this board serve staggered 4-year terms, with the board's dental and lay members continuing to serve 6-year terms. The bill also specifies that the governor may remove these board members as he may currently do so for other professional and occupational licensing boards (i.e., for "cause", such as incapacity, conflicts of interest, malfeasance, etc.)

Residency Requirement Deleted for Commission and Enlistment in South Carolina State Guard (S. 282, Sen. Lander). This bill deletes provisions which require a person to be a resident of South Carolina in order to be commissioned or enlisted in the South Carolina State Guard.

Referral of Children to Agencies for Assistive Technology (S. 546, Sen. Glover). This bill, identical to H. 3501 (introduced two months ago) allows the Department of Health and Environmental Control (DHEC) or any person conducting an early periodic screening, diagnosis and treatment screening or another physical examination of the child to refer the child to an appropriate agency for an assistive technology examination if it is determined that the child could benefit from use of that technology. The bill defines "assistive technology" as a device or service (such as wheelchairs, home and workplace modifications, hearing or vision aids) used to increase, maintain or improve the functional capacities of a person with a disability.

## WAYS AND MEANS

Fuel Tax for Alternative Motor Fuels (H. 3917, Rep. Keyserling). This bill sets the state's gasoline tax for alternative fuels at 16 cents per 125,070 British Thermal Units (BTUs). For purposes of this tax, "alternative motor fuels" means propane (liquefied petroleum gas), natural gas, electricity, and fuel mixtures containing at least 70 percent ethanol or methanol.

Tax Credits for Qualified Residential Renewable Energy Source Expenditures (H. 3918, Rep. Keyserling). This bill allows taxpayers to claim an individual income tax credit for various energy efficiency expenditures.

Under these provisions, a taxpayer is allowed a state individual income tax credit equal to 25 percent of the purchase price of all qualified residential renewable energy source expenditures (up to a maximum credit of \$1,000 a residential unit). In order to qualify for the credit, the expenditure must be made after June of this year by the taxpayer for renewable energy source property installed in connection with a residential building which is located in South Carolina and used by the taxpayer, or his tenants in a landlord/tenant relationship for residential purposes, or constructed by the taxpayer to be used for residential purposes by the buyer. The bill lists expenditures (such as purchases of solar energy equipment and heat pumps) which qualify as residential renewable energy

## Legislative Update, April 11, 1995

source expenditures and provides that such expenditures in a newly-constructed home are not eligible for the credit unless the home is built in accordance with the most recent Model Energy Code approved by the Council of American Building Officials. The bill also provides an individual income tax credit equal to 25 percent of the purchase price of all qualified residential energy efficiency expenditures (such as insulation or energy control devices), and up to a maximum credit of \$1,000 a residential unit, provided the person meets the same criteria as required for persons seeking the income tax credit for renewable energy source expenditures (e.g., location of residential building in state, etc.).

The bill also allows a state individual income tax credit equal to 15 percent of the purchase price of a vehicle which can be propelled primarily by an alternative fuel, or 25 percent of the installation and equipment costs of converting a vehicle so that it can be propelled primarily by an alternative fuel. For purposes of these provisions, an "alternative fuel" means natural gas, liquefied petroleum gas, any fuel containing at least 70 percent ethanol or methanol, and electricity.

Finally, the bill restricts the sales tax exemption for electricity and other fuels used for residential purposes, such that, in a monthly billing cycle, if more than 1,500 kilowatt hours of electricity or more than 100 therms of natural gas are consumed, then the sales tax exemption would apply only to 60 percent of the gross proceeds of sales or sales price of the electricity and natural gas. Revenue from the taxable portion of electricity and natural gas sales would be credited to the State's general fund, with the taxable portions of these sales not subject to the local option sales and use tax.

**Partial Property Tax Exemption for Vehicles Propelled by Alternative Fuel** (H. 3919, Rep. Keyserling). This bill exempts from property taxes 50 percent of the fair market value of a motor vehicle capable of operating on natural gas, propane, electricity, or a fuel consisting of at least 85 percent ethanol or methanol. If adopted, this partial property tax exemption would apply to motor vehicle tax years beginning after June of 1995.

**Higher Maximum Sales Tax on Motor Vehicles and Other Items** (H. 3920, Rep. Keyserling). Current law sets a sales tax cap of \$300 on the sale or lease of aircraft, motor vehicles, motorcycles, boats, trailers, semitrailers, horse trailers, recreational vehicles and certain self-propelled light construction equipment. This bill would raise the sales tax cap, such that the sales tax imposed on sale or lease of these vehicles is 4 percent on the first \$6,000 and 6 percent on amounts in excess of \$6,000, but in no case more than \$750.

The bill also provides for a lower sales tax cap for motor vehicles meeting certain fuel efficiency or other standards, as follows:

(a) motor vehicles with fuel efficiency rate of between 35-39 miles per gallon---\$600;



## Legislative Update, April 11, 1995

(b) motor vehicles with fuel efficiency rate of 40 or more miles per gallon---\$450;

(c) motor vehicles capable of operating primarily on natural gas, propane, electricity or a fuel consisting of at least 70 percent ethanol or methanol---\$300.

Revenues from items subject to this sales tax cap which are in excess of such revenues for fiscal year 1994-1995 must be remitted to counties on a per capita basis and used to reduce residential property taxes.

Corporate Income Tax Credits for Alternative Energy-Related Resources (H. 3921, Rep. Keyserling). This bill provides corporate income tax credits for construction in South Carolina of facilities, etc. involving use of alternative fuels, as follows:

---A corporation constructing a facility for production of photovoltaic equipment is allowed a corporate income tax credit of an amount equal to 25 percent of the installation and equipment costs of construction. This credit, however, is not allowed to the extent that any of the equipment costs were provided by federal, state or local government grants. The unused amount of this credit may be carried over for the next succeeding 5 taxable years. For purposes of this tax credit, "photovoltaic equipment" consists of those products designed, manufactured and produced to convert sunlight directly into electricity.

---A corporation constructing or installing solar energy equipment for production of heat or electricity in manufacturing or service processes of its business is allowed a corporate income tax credit equal to 25 percent of the installation and equipment costs for the solar energy equipment. This credit may not exceed \$25,000 for any single installation and is not allowed to the extent that any of the equipment costs were provided by government grants. Unused credits may be carried over for the next succeeding 3 taxable years. For purposes of this credit, "solar energy equipment" is equipment and materials designed to collect, store, transport or control energy derived directly from the sun.

---A corporation constructing a facility for refueling or recharging vehicles propelled by natural gas, liquefied petroleum gas, or electricity is allowed a corporate income tax credit equal to 25 percent of installation and equipment costs of construction. Furthermore, any corporation installing equipment for refueling or recharging vehicles propelled by these alternative sources at its refueling or recharging facility in this State is allowed a corporate income tax credit equal to 25 percent of installation and equipment costs. The credits may not exceed \$25,000 for each fueling location and are not allowed to the extent that construction or equipment costs were provided by government grants. An unused amount of the credit may be carried over for the next succeeding 5 years.

---A corporation purchasing vehicles which can be propelled primarily by alternative fuels is allowed a corporate income tax credit equal to 15

### Legislative Update, April 11, 1995

percent of each vehicle's purchase price, while a corporation that converts existing petroleum-fueled vehicles to operate primarily on alternative fuels is allowed a corporate income tax credit equal to 25 percent of installation and equipment costs. These credits cannot exceed \$7,500 an eligible vehicle purchased or converted in the tax year for which the credit is allowed, and an unused amount of the credit may be carried over for the next succeeding 2 years. For purposes of this credit, "alternative fuel" means natural gas, liquefied petroleum gas, a fuel containing at least 70 percent ethanol or methanol, and electricity.

The bill also revises the current sales tax exemption for [1] fuels sold to manufacturers, power companies and transportation companies for generation of electric or motive power, and [2] electricity used by manufacturers, miners or quarries to manufacture, mine or quarry tangible personal property for sale, such that only 80 percent of the gross proceeds of sales or the sales price of this fuel sold to these entities would be exempt from the sales tax. 50 percent of revenue from the sales tax imposed on the taxable portion of these fuel sales must be credited to a separate fund in the State Treasury known as the "Recycling Industry Incentive Fund." This fund must be used by the Department of Commerce to provide incentives for industries using post-consumer recycled materials to locate in South Carolina. The balance of the revenue must be credited to the State's General Fund. Taxable portions of these fuel sales are not subject to the local option sales tax.

If adopted, these provisions would be effective July 1, 1995.

Practice of Law by Retired Justices and Judges (H. 3930, Rep. Jennings). Current law prohibits a justice or judge who is drawing retirement compensation and engaging in practice of law from serving as a justice or judge in any South Carolina court, with the retired justice or judge, within 30 days of his retirement, required to make an irrevocable decision as to whether he wishes to [1] engage in law practice or [2] be eligible for appointment by the Chief Justice as a justice or judge in the State's courts. This bill deletes the requirement that this decision be made within 30 days of retirement, instead providing that if the justice or judge desires to engage in law practice on or after retirement, then he must at that time make the irrevocable decision to engage in such practice, thereby making him ineligible for appointment as a justice or judge in the courts.

\$1.00 Increase in Ticket Prices of Intercollegiate Football Games and Basketball Games at State-Supported Colleges and Universities for Purpose of Enhancing Professors' Salaries and Other Activities (H. 3953, Rep. Stuart). This bill adds one dollar (\$1.00) to the ticket or admission price of intercollegiate football games and intercollegiate (both men's and women's) basketball games of state-supported colleges and universities which are subject to rules and regulations of the National Collegiate Athletic Association, National Association for Intercollegiate Athletics, or National Junior College Athletic Association. Proceeds from this extra charge must be deposited in a separate fund and used for enhancement of professors'



## Legislative Update, April 11, 1995

salaries, recruitment, training and research, in the manner provided by the General Assembly. Earnings from this fund may only be used for providing such aid, etc. to professors.

**Magistrates Part of Unified Judicial System (H. 3956, Rep. McAbee).**  
This bill would make magistrates and magistrate courts part of South Carolina's unified judicial system, which currently consists of the Supreme Court, Court of Appeals, Circuit Court and Family Court. Under these provisions, fees, costs, penalties, etc. collected by magistrates and magistrates' courts must be deposited in the State's general fund, and magistrates would become state judicial officials, compensated by the State in the annual general appropriations act and supervised by the Chief Justice of the State Supreme Court. In becoming state judicial officials, magistrates also would join and participate in the state's retirement system for judges and solicitors. Beginning with the 1995-1996 general appropriations act, the General Assembly would be required to reimburse counties each fiscal year on a formula basis to be provided by law for the costs each county incurs in providing for the operation of its respective magisterial system.

The bill allows counties to continue to have only part-time magistrates but prohibits full-time magistrates from being changed to part-time during their term in office. The bill also provides for compensation of magistrates, as follows:

(1) Full-time magistrates with 10 or more consecutive years of service as a magistrate on July 1, 1995: Base salary of at least \$50,000 a year;

(2) Full-time magistrates with less than 10 years consecutive service as a magistrate on July 1, 1995: Base salary of at least \$30,000 a year, plus \$2,000 for each year after the first which he has served in office until the base salary reaches at least \$50,000;

(3) Full-time magistrates appointed after July 1, 1995: Base salary of at least \$30,000 a year plus a \$2,000 increase following the first year of service until, like the base salaries of magistrates with greater experience (as in [1] and [2] above), his salary reaches at least \$50,000 a year.

Under these provisions, part-time magistrates are entitled to a proportionate percentage of the minimum (as currently opposed to the entire) salary provided for full-time magistrates. The bill increases from \$3,000 to \$5,000 the yearly supplement paid to a full-time chief magistrate and from \$1,500 to \$2,500 the yearly supplement paid to a part-time chief magistrate.

The bill revises the procedure for determining the number of magistrates per county, such that the number (as currently opposed to the maximum number) of magistrates per county is the greater of [a] 1 magistrate for every 28,000 persons in the county, or [b] the number determined by taking the average of the ratio of 1 magistrate for every 28,000 county residents and the ratio of 1 magistrate for every 150 square miles of area in the county. Additional magistrates must be added if the county has less than the ratio. Magistrates appointed to positions added in a county in 1996

### Legislative Update, April 11, 1995

pursuant to this act would serve initial terms commencing on May 1, 1996, expiring in the same year other magistrates' positions in the county expire; thereafter, the new magistrates would serve the same 4-year terms as other magistrates in the county serve.

The bill also requires a county to notify appropriate state officials within 15 days after the end of a particular month if a magistrate has not filed for that particular month a report with the county governing body concerning status and disposition of cases brought before him. (Current law requires each magistrate within a county containing a city of 50,000 or more residents to file each month a report of the status and disposition of cases brought before him.)

State and Police Officers Retirement System (H. 3966, Rep. Askins). This bill allows an employer other than the State under the South Carolina Retirement System and South Carolina Police Officers Retirement System to elect not to make the employer contribution required for an employee to establish nonmember service. This election is irrevocable. However, an employee of an electing employer may establish credit for nonmember service by paying both the employee and employer share.

### WITHOUT REFERENCE

Revisions to Commission on Higher Education (H. 3915, House Education and Public Works Committee). This bill would revise the composition of the Commission on Higher Education, increasing the size of the Commission from 18 to 19 members. While 12 of these members would continue to be appointed from congressional districts, there no longer would be 6 at-large members on the Commission; in place of the at-large appointments would be 6 members representing public colleges and universities, all appointed by the governor with the advice and consent of the Senate. Equitable representation by sector must be given on the commission by appointing members from public senior research institutions, 4-year public institutions of higher learning, and technical colleges or the State Board for Technical and Comprehensive Education. All 6 of the commission members representing public colleges and universities must be members of the governing boards of their respective institutions, would serve as ex-officio members of the commission, and would be appointed as the terms of the current at-large appointees expire. The bill retains the current 2-term limit for commission members representing congressional districts but limits commission members representing public institutions of higher learning to 1 term. The bill also adds an ex-officio member to the commission, with this member representing independent colleges and universities and appointed by the governor with the advice and consent of the Senate. This ex-officio member must be serving as a member of the Advisory Council of Private College Presidents, may serve no more than 2 consecutive 4-year terms, and serves as a non-voting member.



## Legislative Update, April 11, 1995

The bill provides that any person serving as an ex-officio member of the Commission because of his membership on the governing board of a public or private institution of higher learning, a technical college or other entity must cease to be an ex-officio commission member if he ceases to be a member of the governing board of his respective institution.

All commission members serving in office at the time these provisions become effective would continue to serve until expiration of their current terms.

The bill also grants additional duties and functions to the Commission as pertains to the various public institutions of higher learning, with the commission required to establish procedures for transferability of courses at the undergraduate level between 2 and 4-year institutions and schools; coordinate with the State Board of Education in approval of secondary education courses for the purpose of determining college entrance requirements; and review undergraduate admissions standards for in-state and out-of-state students. The bill also revises the entities to which the commission must make recommendations concerning programs, financing, etc. of state-supported institutions of higher learning, so as to provide these recommendations must be made to the governor's office and General Assembly, as currently opposed to the Budget and Control Board and the General Assembly. Additionally, the House Ways and Means and Senate Finance Committees may refer to the Commission for study and report requests of institutions of higher learning for new or additional appropriations or new or expanded programs.

Under these provisions, the commission's executive director must be appointed by the commission to carry out its duties. He is not subject to the State's Grievance Procedure Act and may be dismissed without cause.

The bill also establishes a 12-member joint legislative committee to study the governance and operation of higher education in South Carolina. Of these 12 members, 4 are House members (appointed by the Speaker), 4 are Senators (appointed by the Senate President Pro Tempore) and 4 are appointed by the governor. Of the 4 appointments from each chamber, at least 1 must be African American and at least 1 must be a woman. Of the governor's appointees, 2 must represent the business community, 1 must be an institutional trustee elected by the General Assembly, and 1 must be a member of the Commission on Higher Education. The committee must conduct a comprehensive review of the current governance structure of the state's higher education system; examine national trends in higher education governance structures and lines of authority/relationship between boards of trustees and the commission; and investigate how higher education opportunities are currently provided to South Carolina students by examining structure of higher education institutions. The committee must issue a final report by January 1, 1996, with the report serving as the decennial report of the Commission on Higher Education. This report would be submitted to the House Education and Public Works and Senate Education Committees and must be considered the first report required by the Decennial section of the

Legislative Update, April 11, 1995

Commission's Master Assessment Plan. Committee members are entitled to the usual mileage, per diem and subsistence paid by law to legislators, with such payments coming from approved accounts of both houses.

Finally, the bill provides for filling of vacancies existing on this act's effective date. Under these provisions, vacancies on the commission from among members representing congressional districts must be filled by an at-large member if he resides in the district for which there is a vacancy, with the term of the district member filled by an at-large member being the length of the term the at-large member would have served if he had remained an at-large member. Any vacancy created by the appointment of an at-large member to fill a district vacancy is considered an expiration of the at-large term and must be filled as provided in this act (i.e., by a person representing public colleges and universities).

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